

WISCONSIN COMMUNITY DEVELOPMENT BLOCK GRANT

AGREEMENT

BETWEEN THE

WISCONSIN DEPARTMENT OF COMMERCE,

«COMMUNITY»

AND

«COMPANY_NAME»

This Agreement is entered into by and between the Wisconsin Department of Commerce ("Department"), «Community», ("Municipality"), and «Company_name», ("Borrower").

WITNESSETH

WHEREAS, the Municipality and the Borrower have applied to the Department for economic development assistance under the Community Development Block Grant for Economic Development (CDBG-ED) program; and

WHEREAS, the Department is authorized to grant funds for the purpose of economic development pursuant to Section 560.04 and 560.045 Stats.; and

WHEREAS, in reliance upon the representations in the Municipality and Borrower's Application, the Department agrees to award up to «Loan_Amt_Plus_Admin_Plus_NUM» (\$«Number_Loan_Amount_plus_Admin»), to the Municipality to be utilized in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, the Department, Municipality, and Borrower agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:
 - a) "Administrative Costs" means CDBG-ED administrative costs incurred by the Municipality in connection with the Project.
 - b) "Agreement" means this Community Development Block Grant Agreement between the Department, the Municipality, and the Borrower, together with any future amendments thereto.
 - c) "Application" means the Community Development Block Grant application submitted by the Municipality and the Borrower.

- d) "Borrower" means «Company_name», together with its lawful successors and assigns.
- e) "CDBG-ED" means Community Development Block Grant for Economic Development.
- f) "CDBG-ED Loan" means the Municipality's loan to the Borrower under this Agreement.
- g) "Collateral" means the property described in Exhibit B.
- h) "Department" means the Wisconsin Department of Commerce, together with its lawful successors and assigns.
- i) "Effective Date" means the date this Agreement is executed by the Department.
- j) "Eligible Project Costs" means the costs and expenditures incurred by the Borrower in connection with the Project, between «Commitment_Date» and «Drawdown_end_date», as more fully described in Exhibit B.
- k) "Full-Time Position" means any permanent, position where an employee is required, as a condition of employment, to work at least 40 hours per week and 2,080 hours per year including paid leave and holidays.
- l) "Guaranty" means the loan Guaranty attached as Exhibit C.
- m) "Guarantor" means «Guarantor_name», individually.
- n) "Implementation Handbook" means the Department's CDBG-ED Program Implementation Handbook, together with any future amendments thereto.
- o) "LMI Persons" means persons with household income less than eighty (80) percent of the median household income by family size in the County where the Project is located.
- p) "Made Available to LMI Persons" means the Borrower is working with the local Job Service Office or Workforce Development Boards to ensure that LMI Persons receive consideration for the vacant positions to be filled. (www.dwd.state.wi.us/dws/directory)
- q) "Municipality" means «Community», together with its lawful successors and assigns.
- r) "Project" means the activities described in Exhibit B.
- s) "Promissory Note" means the Promissory Note attached as Exhibit A.
- t) "Term of This Agreement" means until the Borrower's obligations hereunder are fully satisfied.

2. DEPARTMENT'S GRANT OBLIGATIONS.

- a) Subject to the terms and conditions of this Agreement, including the Borrower's and Municipality's satisfaction of the contingencies set forth in Paragraph 4, the Department shall grant CDBG-ED funds to the Municipality for Administrative Costs and Eligible Project Costs.

- b) The CDBG-ED funds granted by the Department under this Agreement shall be used:
 - (i) To pay for up to «Typed_Admin_Amount» («Number_Admin_Amount») in Administrative Costs incurred by the Municipality, and
 - (ii) To make a CDBG-ED Loan to the Borrower for up to «Loan_Amount» (\$«Dollar_Amount»).
- 3. **THE MUNICIPALITY'S LOAN OBLIGATIONS.** Subject to the Borrower's compliance with the terms and conditions of this Agreement, the Municipality shall lend up to «Loan_Amount» (\$«Dollar_Amount»), to the Borrower for Eligible Project Costs. The Municipality's loan to the Borrower shall be evidenced by the Promissory Note.
- 4. **THE DEPARTMENT'S CONTINGENCIES.** The Department's obligation to grant CDBG-ED funds to the Municipality shall be contingent upon the satisfaction of the following contingencies to the reasonable satisfaction of the Department:
 - a) The representations and warranties of the Municipality and Borrower herein and in the Application shall be true and accurate as of the Effective Date.
 - b) On or before the Effective Date, the Municipality and Borrower shall execute and deliver the Agreement to the Department.
 - c) Prior to disbursement of any CDBG-ED funds, the Municipality shall execute and deliver to the Department the Municipality's Environmental Review Record and all other documents that reasonably may be required by the Department to effect the terms of this Agreement.
 - d) Prior to the disbursement of any CDBG-ED Loan funds, the Borrower shall execute and deliver to the Department:
 - (i) A borrowing resolution.
 - (ii) A real estate mortgage listing the Municipality as mortgagee.
 - (iii) A security agreement, granting the Municipality a priority or purchase money security interest on the Collateral purchased with the CDBG-ED Loan funds. Authentication of this agreement by the Borrower authorizes the Department to file a UCC financing statement for the stated Collateral.
 - (iv) All other documents that reasonably may be required by the Department to effect the terms and conditions of this Agreement.
- 5. **DISBURSEMENT OF GRANT PROCEEDS.**
 - a) Grant disbursements from the Department to the Municipality hereunder for Administrative Costs and Eligible Project Costs shall be made on a periodic basis upon the Department's receipt and approval of a Request for Disbursement and supporting documents. The supporting documents shall include itemized invoices from vendors and suppliers, and a report detailing the dollar amount and purpose of the Eligible Project Costs incurred since the date of the last CDBG-ED Loan disbursement. The Municipality shall use the forms provided by the Department to request grant disbursements.

- b) The Department, in its sole discretion, may withhold disbursements if the Department determines that:
 - (i) The Municipality has not provided adequate documentation of Administrative Costs, has failed to file required reports with the Department, or is in default under the terms of this Agreement; or
 - (ii) The Borrower has failed to comply with and/or is in default under the terms and conditions of this Agreement or has failed to provide adequate documentation of Eligible Project Costs.
- c) All funds for Administration Costs must be drawn by «Drawdown_end_date».

6. DISBURSEMENT OF CDBG-ED LOAN PROCEEDS.

- a) CDBG-ED Loan disbursements from the Municipality to the Borrower hereunder for Eligible Project Costs shall be made on a periodic basis upon the Municipality's receipt and approval of requests for disbursement and supporting documents. The supporting documents shall include itemized invoices from vendors and suppliers and a report detailing the dollar amount and purpose of the Eligible Project Costs incurred since the date of the last CDBG-ED Loan disbursement. Borrower agrees that CDBG-ED Loan funds that will be used to purchase equipment shall not be used to pay for the installation of this equipment.
- b) The Municipality may withhold CDBG-ED Loan disbursements if it determines that the Borrower has not provided adequate documentation of Eligible Project Costs, has failed to file required reports hereunder, or is otherwise in default under the terms of this Agreement.

7. BORROWER'S LOAN PAYMENTS. This CDBG-ED Loan shall be repaid in accordance with the terms of the Promissory Note.

8. TAXES AND FEES. Except as otherwise provided in this Agreement, the Borrower shall keep the Collateral free and clear of all judgements, levies, liens, security interests and encumbrances and shall pay all federal, state and local fees, assessments and taxes which may be assessed upon the ownership, possession or use of the Collateral.

9. INSURANCE. The Borrower shall procure and maintain comprehensive property damage, commercial general liability and business interruption insurance reasonably acceptable to the Municipality and the Department, shall cause the Municipality to be named as "loss payee" and/or "mortgagee" on all insurance policies on the Collateral, and shall upon the request of the Municipality or Department, deliver an Officer's Certificate specifying the details of such insurance in effect.

10. "EVENT OF DEFAULT" DEFINED. The occurrence of any one or more of the following events shall constitute an "Event of Default" for the purposes of this Agreement:

- a) The Borrower's failure to pay, within ten (10) calendar days of the due date, any of the principal payments or interest due under this Agreement;

- b) The Borrower's failure to comply with or perform any of its obligations under this Agreement; provided, however, that the Borrower's failure to comply with the terms and conditions of Paragraph 13 a), b), and c) hereunder shall not be considered an "Event of Default".
- c) Any assignment for the benefit of the Borrower's creditors or commission of any other act amounting to a business failure;
- d) The filing, by or against the Borrower, of a petition under any chapter of the U.S. Bankruptcy Code or for the appointment of a receiver;
- e) Any default or breach of the Borrower's obligations under the terms and conditions of its loan agreements, leases, or financing arrangements with other creditors;
- f) Any material misrepresentation with respect to the Borrower's warranties and representations under this Agreement or the Application; or
- g) Any other action or omission by the Borrower, which in the Department's or Municipality's reasonable discretion, jeopardizes the Borrower's ability to fulfill its obligations under this Agreement or otherwise causes the Department or Municipality to deem itself insecure.

11. REMEDIES IN EVENT OF DEFAULT.

- a) Upon the occurrence of any Event of Default, the Municipality shall send a written notice of default to the Borrower and the Department, setting forth with reasonable specificity the nature of the default. If the Borrower fails to cure the default to the reasonable satisfaction of the Municipality and the Department within ten (10) calendar days, the Municipality may, with prior written consent of the Department and without further written notice to the Borrower, declare the Borrower in default, terminate this Agreement effective immediately, and accelerate the principal balance, accrued interest, and other amounts owed by the Borrower hereunder.
- b) Upon the termination of this Agreement:
 - (i) The Borrower shall be liable for the full unpaid principal balance together with interest at the annual rate of twelve (12) percent from the date of the Event of Default to the date the Borrower's obligations hereunder are paid in full.
 - (ii) Subject to the rights of other creditors, the Department and the Municipality shall be entitled to exercise any and all remedies available to the Department and the Municipality under this Agreement, related loan documents, and applicable laws.
- c) In addition to the rights and remedies available to the Department and the Municipality at law, in equity, or in bankruptcy, the Department and the Municipality shall be entitled to recover from the Borrower an amount equal to the sum of:
 - (i) The unpaid principal balance, accrued interest, and other amounts owed by the Borrower hereunder;
 - (ii) All court costs and reasonable attorney's fees incurred by the Department and the Municipality in the enforcement of its rights and remedies under this Agreement,

including all costs incurred in foreclosing upon, repossessing, storing, repairing, selling, leasing or otherwise disposing of the Collateral; and

(iii) Any other damages arising from the Borrower's default.

- d) The Department or Municipality's foreclosure upon, repossession of, and subsequent sale, lease, or disposition of the Collateral shall not affect the Department or Municipality's right to recover from the Borrower any and all damages caused by the Borrower's breach of this Agreement. The Department or Municipality's rights and remedies hereunder shall be cumulative, not exclusive, and shall be in addition to all other rights and remedies available at law, in equity or in bankruptcy.
- e) Upon the occurrence of any Event of Default, the Department, in its sole discretion, may pursue or intervene in any negotiations or litigation to enforce and protect the Department's rights and interests. Upon the Department's request, the Municipality shall execute and deliver an assignment and any other legal documents that may be required by the Department to facilitate its pursuit or intervention in such negotiations or litigation.

12. BORROWER'S WARRANTIES AND REPRESENTATIONS. To induce the Department and the Municipality to enter into this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Borrower hereby warrants and represents that:

- a) The Borrower is a «Corporation» duly organized, validly existing, and authorized to engage in business in the State of Wisconsin.
- b) The Borrower is qualified to engage in business in every jurisdiction where the nature of its business makes such qualification necessary.
- c) The Borrower is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it, the violation of which would have a material and adverse effect on the Borrower's financial ability to comply with this Agreement.
- d) The Borrower is unaware of any conditions which could subject it to any damages, penalties or clean-up costs under any federal or state environmental laws which would have a material and adverse effect on the Borrower's financial ability to comply with this Agreement.
- e) The Borrower has read, fully understands, and agrees to all of the terms and conditions in this Agreement and the related loan documents.
- f) This Agreement is valid and enforceable in accordance with its terms against the Borrower, subject only to applicable bankruptcy, insolvency, reorganization or other similar laws affecting generally the enforceability of the rights of creditors.
- g) The Borrower is financially solvent and able to comply with all of the terms and conditions set forth in the Agreement.
- h) The financial statements and other information provided by the Borrower to the Department and the Municipality are complete and accurate in accordance with Generally Accepted Accounting Principles, and may be relied upon by the Department in deciding whether to enter into this Agreement with the Borrower.

- i) The Borrower is not in default under the terms and conditions of any loan agreements, leases, or financing arrangements with the Borrower's other creditors.
- j) The Borrower has private Project funds as identified in Exhibit B to fund all other costs relating to the Project.
- k) The Borrower's warranties and representations herein are true and accurate as of the date of this Agreement, and shall survive the execution thereof.
- l) In making these warranties and representations, the Borrower has not relied upon any information furnished by the Department.

13. AFFIRMATIVE BORROWER COVENANTS.

- a) Employment Guaranties With Respect To Existing Full-Time Positions. The Borrower shall keep and maintain «Exist_PositionNUM» existing Full-Time Positions that the Borrower had in «Location», Wisconsin through «Position_Maintenance_Date», which number shall be the threshold for determining the Borrower's compliance with the terms in Paragraph 13 b) below.
- b) Employment Guaranties With Respect To New Employment. The Borrower shall create and fill «New_positionsNUM» new Full-Time Positions in «Location», Wisconsin by «Position_Creation_Date» and, thereafter, shall maintain each of those new Full-Time Positions in «Location», Wisconsin until «Position_Maintenance_Date».
- c) Employment Guaranties With Respect To LMI Persons. At least fifty-one percent (51%) of the new Full-Time Positions created by the Borrower in accordance with Paragraph 13 b) of this Agreement shall be Made Available to LMI Persons.
- d) Job Penalty.
 - (i) If the Department, in its reasonable discretion, determines that the Borrower has failed to comply with its obligations under Paragraphs 13 a) and b) of this Agreement, then, for each Full-Time Position that the Borrower fails to keep, create and fill, or maintain, whichever the case may be, the Borrower shall pay the Municipality upon demand a penalty of Five-Hundred Dollars (\$500.00) for each Full-Time Position.
 - (ii) If the Department, in its reasonable discretion, determines that the Borrower has failed to comply with its obligations under Paragraph 13 c) of this Agreement, then for each Full-Time Position that the Borrower has not Made Available to LMI Persons, the Borrower shall pay the Municipality a penalty of One Thousand Dollars (\$1,000.00) Such penalty shall be in addition to any penalty under Paragraph 13d(i) of this Agreement.
- e) Maintenance of Operations. In accordance with §560.075(2), the Project will not be relocated outside of Wisconsin for a minimum of five years from the date of the award.
- f) Record Keeping. The Borrower shall prepare, keep and maintain such records as may be reasonably required by the Department to show:
 - (i) The number of Full-Time Positions kept, created, filled, and maintained by the Borrower pursuant to Paragraph 13 a), and b) of this Agreement.

(ii) The amount and disposition of CDBG-ED Loan funds provided and disbursed under this Agreement; and

(iii) The total cost of the Project.

g) Financial Records. All of the Borrower's financial records shall be prepared, kept and maintained in accordance with Generally Accepted Accounting Principles. The Borrower shall provide such records to the Department during the Term of This Agreement as may be requested. Such materials shall be retained by the Borrower for a period of at least three (3) years after the CDBG-ED Loan is paid in full.

h) Inspection.

(i) The Department, the Municipality, and their respective agents, shall, at any reasonable time and upon 48 hours notice, have the right to enter upon the Borrower's premises to inspect the Project.

(ii) The Borrower shall produce for the Department's inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement.

i) Reporting.

(i) The Borrower shall provide the Department with project reports, utilizing forms provided by the Department, a copy of which is attached as the last page of this Agreement, as well as interim and/or fiscal year end financial statements in accordance with the following table, or as otherwise requested by the Department:

REPORTING REQUIREMENTS

Report No.	Period Covered	Documentation Required			Due Date
		Project Report	Financial Statements		
			Interim As of:	Fiscal Year Ended:	
1.		Semi-Annual			
2.		Semi-Annual			
3.		Semi-Annual			
4.		Semi-Annual			
5.		Semi-Annual			
6.		Semi-Annual			
7.		Semi-Annual			
8.		Semi-Annual			
		Semi-			

9.		Annual			
10.		Semi-Annual			

- i) Audit Report. Within (60) days after completing the Project, or upon the request of the Department, the Borrower shall provide the Department with an audited financial report, in form and substance reasonably satisfactory to the Department, identifying the total cost of the Project and showing that the CDBG-ED Loan funds were expended in accordance with this Agreement.
- j) Nondiscrimination in Employment. During the Term of This Agreement, the Borrower shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in sec. 51.01 (5) Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Borrower further agrees to take affirmative action to ensure equal employment opportunities. The Borrower agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

14. **NEGATIVE BORROWER COVENANTS.**

- a) Consolidation or Merger. During the Term of This Agreement, the Borrower shall not consolidate or merge with or into any other corporation or business entity without the prior written consent of the Department and the Municipality.
- b) Sale of Assets. During the Term of This Agreement, the Borrower shall not sell, transfer, hypothecate, liquidate, pledge or otherwise encumber the Collateral without the prior written consent of the Department and the Municipality; provided however, that nothing herein shall prohibit the Borrower from selling inventory in the ordinary course of business.
- c) Borrower's Operations. During the Term of This Agreement, the Borrower shall not move the Project, or any of the Full-Time Positions relating thereto, outside the municipal boundaries of the Municipality without the prior written consent of the Department and the Municipality.

15. **WISCONSIN OPEN RECORDS LAW.**

- a) Subject to the following terms, the Department and the Municipality shall safeguard all of the financial statements provided to them by the Borrower:
 - (i) Except as otherwise required or provided by court order, legal process or applicable Wisconsin law including, without limitation, the Wisconsin Open Records Law, sec. 19.31, Stats., et seq, the Department and the Municipality shall not reveal or disclose any financial information and documents provided by the Borrower to any non-government person or entity without the prior written consent of the Borrower.

(ii) If the Borrower believes or contends that any financial statements provided hereunder qualify as “trade secrets” exempt from disclosure under the Wisconsin Open Records Law, the Borrower shall:

- A. Fill out a standard trade secrets designation form to be provided by the Department, designating specific information or documents as “trade secrets” and agreeing to defend and indemnify the Department and the Municipality, and to hold them harmless in the event of any future open records request asking for copies of such documents; and
- B. Provide the Department and the Municipality with two copies of such information -- a clean copy and a copy with the “trade secret” information redacted--for the Department’s and the Municipality’s files.

16. MUNICIPALITY’S WARRANTIES AND REPRESENTATIONS. To induce the Department to enter into this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Municipality hereby warrants and represents to the Department that:

- a) The Municipality has read, fully understands, and agrees to all of the terms and conditions in this Agreement;
- b) This Agreement is valid and enforceable in accordance with its terms against the Municipality, subject only to applicable bankruptcy, insolvency, reorganization, or other similar laws generally affecting the enforceability of the of the rights of creditors and equitable principles relating to enforceability;
- c) The information provided by the Municipality to the Department is complete and materially correct; and
- d) The Municipality’s warranties and representations herein are true and accurate as of the date of this Agreement, and shall survive the execution thereof.

17. AFFIRMATIVE MUNICIPALITY COVENANTS. During the Term of This Agreement, the Municipality, at its expense, shall be responsible for:

- a) Enforcing the CDBG-ED Loan documents and ensuring that the Borrower complies with all of its payment and other obligations thereunder;
- b) Promptly notifying the Department of any known Events of Default by the Borrower;
- c) Protecting the Department’s rights and interests with respect to the Borrower’s payments; and
- d) Complying with all of the contractual, statutory and administrative requirements set forth in this Agreement and the Implementation Handbook.

18. MUNICIPALITY’S FAILURE TO PERFORM.

- a) If the Municipality fails to perform any of its obligations hereunder, the Department may intervene and protect its rights and interests. Upon the Department’s request, the Municipality shall execute and deliver an assignment and any other legal documents that

may be required by the Department to facilitate its pursuit or intervention in such negotiations or litigation.

- b) The Department in its sole discretion and upon ten (10) calendar days prior written notice to the Municipality, may terminate this Agreement if the Municipality fails to perform any of its obligations hereunder. If the Department determines that the Municipality has used CDBG-ED funds for purposes other than the activities specifically authorized in the Agreement, the Municipality shall repay such funds to the Department within thirty (30) calendar days after such determination, together with related administrative costs, interest at the annual rate of twelve (12) percent, court costs and attorneys' fees.

19. **ENTIRE AGREEMENT.** This Agreement and the accompanying loan documents, Promissory Note, Guaranties, and exhibits contain the entire Agreement of the parties concerning the Municipality's and Borrower's obligations under the terms and conditions of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Municipality, the Borrower and the Department.

20. **CHOICE OF LAW. THIS AGREEMENT IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN.** If any provisions of the Agreement shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions thereof.

21. **VENUE; JURISDICTION.** Any judicial action relating to the construction, interpretation, or enforcement of this Agreement, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **THE BORROWER HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES THAT THE BORROWER OTHERWISE MIGHT HAVE RELATING THERETO.**

22. **WAIVER OF RIGHT TO JURY TRIAL. THE BORROWER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN THE DEPARTMENT, THE MUNICIPALITY AND THE BORROWER CONCERNING THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT, OR THE RECOVERY OF ANY PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEY'S FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE BORROWER HEREUNDER.**

23. **MISCELLANEOUS.**

- a) Notices to the Borrower hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed to the following person and address or such other person and address as the Borrower may designate in writing:

«Company_name»
«Address»
«City_State__Zip»
Attn: «Contact_name_title»

- b) Notices to the Municipality hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed to the following person and address or such other person and address as the Municipality may designate in writing:

«Community»
«Address2»
«City2_State__Zip»
Attn: «Clerk_name_title»

- c) Notices to the Department hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed as follows:

Wisconsin Department of Commerce
Bureau of Business Finance
201 West Washington Avenue
P.O. Box 7970
Madison, WI 53707
Attn: Contract #ED «Contract_number»

- d) Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which shall remain in full force and effect to govern the parties' relationship.
- e) Department and Municipality Not A Joint Venturer Or Partner. The Department and the Municipality shall not, under any circumstances, be considered or represented to be a partner or joint venturer of the Borrower or any beneficiary thereof.
- f) Documents. All documents required to be delivered contemporaneously with the execution and delivery of this Agreement are expressly made a part of this Agreement as though completely herein, and all references to this Agreement herein shall be deemed to refer to and include all such documents.
- g) Agreement Controlling. In the event of any conflict or inconsistency between the Agreement and the exhibits hereto, the terms of this Agreement shall control.
- h) Publications. Any publications or news releases issued by the Municipality or the Borrower relating to this Project shall state that this Project was supported and financed by the Community Development Block Grant program of the Wisconsin Department of Commerce.
24. **CAPTIONS.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.
25. **AUTHORITY TO SIGN DOCUMENT.** The person(s) signing this Agreement on behalf of the Borrower certifies and attests that the Borrower's respective Articles of Organization, Articles of Incorporation, By Laws, Member's Agreement, Charter, Partnership Agreement, Corporate or other Resolutions, and/or other related documents give full and complete authority to bind the Borrower, on whose behalf they are executing this document.

Borrower assumes full responsibility and holds the Department and the Municipality harmless for any and all payments made or any other actions taken by Department or the Municipality in

reliance upon the above representation. Further, Borrower agrees to indemnify Department and the Municipality against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by Department and/or the Municipality resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses.

IN WITNESS WHEREOF, the Department, the Municipality, and the Borrower have executed and delivered this Agreement effective the date set forth next to the Department's signature below.

WISCONSIN DEPARTMENT OF COMMERCE

By: _____
Mary Gage, Acting Bureau Director

_____ Date

«COMMUNITY»

By: _____
«Community_Signature»

_____ Date

By: _____
«Clerk_name_title»

_____ Date

«COMPANY_NAME»

By: _____
«President_Name_Title»

_____ Date

By: _____
«Secretary_Name_title»

_____ Date

EXHIBIT A

Amount: \$«Dollar_Amount»

PROMISSORY NOTE

FOR VALID CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and in consideration for the terms and conditions set forth in the Community Development Block Grant for Economic Development Agreement ("Agreement") between the Wisconsin Department of Commerce ("Department"), «Community» ("Municipality"), and «Company_name» ("Borrower") also identified as Contract #ED «Contract_number», the Borrower promises to pay the Municipality the principal sum of «Loan_Amount» (\$«Dollar_Amount»), or so much thereof as may be advanced by the Municipality, together with interest, in accordance with the terms and conditions hereinafter set forth.

1. **DEFINITIONS.** Terms used in this Promissory Note shall have the same meanings as in the Agreement.
2. **INTEREST RATE.** Except as otherwise provided herein, this Promissory Note shall bear interest on the unpaid principal balance at the annual rate of Two (2) percent, from the date of actual disbursement of the funds, or any portion thereof, to the Borrower until this Promissory Note is paid in full. Interest shall be computed based upon a 365-day year.
3. **TERM.** The term of this Note shall commence on the Effective Date with all principal, accrued interest and other amounts owed hereunder being due and payable not later than «Last_payment_date».
4. **DEFERRAL PERIOD.** The Borrower's payments of principal and interest hereunder shall be deferred until «M_1st_Payment__Date». All interest from the date of the Municipality's first disbursement shall be paid in accordance with the terms of Paragraph 5.
5. **PAYMENT.** Commencing on «M_1st_Payment__Date» and continuing on the first day of each consecutive month thereafter through and including «M_2nd_Last_Payment», the Borrower shall pay this Promissory Note in «Number_of_Payments» equal monthly installments of «Payment_Amount» each; followed by a final installment on «Last_payment_date» which shall include all remaining principal, accrued interest and other amounts owed by the Borrower hereunder. Payments shall be applied first to interest accrued to date of receipt, and the balance, if any, to principal.
6. **TERMS OF PAYMENT.**
 - a) Time shall be of the essence as to the Borrower's payment of all principal, accrued interest, and other amounts owed hereunder, which shall be delivered to the Municipality at the following address, or such other place or places as the Municipality may designate, prior to the close of business on the due dates set forth above:

«Community»
«Address2»
«City2_State__Zip»
Attn: «Clerk_name_title»

- b) If the Borrower fails to pay any amounts owed within ten (10) calendar days of the date when due, then, from the date of default until such delinquent payment is paid in full, the Borrower shall pay the Municipality interest on the delinquent payment at an annual rate of twelve (12) percent. The accrual and collection of such interest shall be in addition to and not in lieu of any other rights and remedies that the Department and Municipality may have under the Agreement, the Promissory Note, other loan documents, and applicable federal and state law.
 - c) The Borrower shall bear the entire risk of loss, theft, damage, destruction, or seizure of the Collateral. The Borrower shall be obligated to pay the principal, interest, and other amounts owed hereunder even if the Borrower is unable to use the Collateral or any portion thereof, because of loss, theft, damage, destruction, seizure, nonrepair, lack of maintenance, or any other reason.
 - d) All principal payments, interest and other amounts owed hereunder shall be paid by the Borrower regardless of any set off, counterclaim, recoupment, defense, or other rights which the Borrower may have against the Department, the Municipality, the sellers of the Collateral, the contractors and subcontractors involved in making improvements to the Collateral, or any other party.
7. **"EVENT OF DEFAULT" DEFINED.** The term "Event of Default" shall have the meaning set forth in the Agreement.
8. **REMEDIES IN EVENT OF DEFAULT.** Upon the occurrence of an Event of Default, the Department and the Municipality shall have the remedies set forth in the Agreement.
9. **NO PREPAYMENT PENALTY.** The Borrower shall have the right to prepay this Promissory Note, in whole or in part, at any time without penalty.
10. **SECURITY AGREEMENT.** This Promissory Note and the Borrower's obligations hereunder are secured by all existing and future security agreements and mortgages between the Municipality and the Borrower, between the Municipality and any indorser of this Note, and between the Municipality and any other person or entity providing collateral security for the Borrower's obligations hereunder, and payment may be accelerated according to any of them.
11. **CHOICE OF LAW. THIS PROMISSORY NOTE IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN.** If any provisions of this Promissory Note shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions thereof.
12. **VENUE; JURISDICTION.** Any judicial action relating to the construction, interpretation, or enforcement of this Promissory Note, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **THE BORROWER HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES THAT MAKER OTHERWISE MIGHT HAVE RELATING THERETO.**

13. **CAPTIONS.** The captions in this Promissory Note are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

14. **WAIVER.** The Department's or the Municipality's failure to declare this Promissory Note in default or to otherwise enforce any of their respective rights or remedies shall not be deemed a waiver of its right to declare this Promissory Note in default and enforce its rights and remedies upon the occurrence of a future Event of Default. Nor shall the Municipality's receipt and acceptance of any payment on this Promissory Note after the occurrence of an Event of Default constitute or be construed as a waiver of the default or the Department's or the Municipality's rights and remedies as a result of that default. No covenant, condition, or provision of this Promissory Note may be waived except with the Department's and Municipality's express written consent.

15. **AGREEMENT INCORPORATED BY REFERENCE.** This Promissory Note is subject to all of the terms, conditions, covenants and promises set forth in the Agreement which is hereby incorporated by reference as if fully set forth herein.

16. **AUTHORITY TO SIGN DOCUMENT.** The person(s) signing this Promissory Note on behalf of the Borrower certifies and attests that the Borrower's respective Articles of Organization, Articles of Incorporation, By Laws, Member's Agreement, Charter, Partnership Agreement, Corporate or other Resolutions, and/or other related documents give full and complete authority to bind the Borrower, on whose behalf they are executing this document.

Borrower assumes full responsibility and holds the Department and the Municipality harmless for any and all payments made or any other actions taken by Department or the Municipality in reliance upon the above representation. Further, Borrower agrees to indemnify Department and the Municipality against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by Department and/or the Municipality resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses.

IN WITNESS WHEREOF, the undersigned Borrower has executed and delivered this Promissory Note as of the dates set forth below.

«COMPANY_NAME»

By: _____
«President_Name_Title»

Date

EXHIBIT B
«Community»
«Company_name»
#ED FY04-«Contract_number»

PROJECT SUMMARY

PROJECT BUDGET

COLLATERAL

SEMI-ANNUAL PROJECT REPORT FOR THE CDBG-ED PROGRAM

This report is due within 30 days of each semi-annual period as defined in the Reporting Section of your Agreement with Commerce

NAME OF PROJECT: «Company_name» «Community» NAME CHANGE? <input type="checkbox"/> Yes (Attach copy of Articles Of Organization) <input type="checkbox"/> No ADDRESS CHANGE? <input type="checkbox"/> Yes (Attach Letterhead Showing Change) <input type="checkbox"/> No	CONTRACT #: ED FY«Contract_number» »	FOR SEMI-ANNUAL PERIOD ENDED: . June 30, _____ . December 31, _____
	REP: «REP_Initials»	
	LOAN REPAYMENTS ARE: <input type="checkbox"/> In Deferral <input type="checkbox"/> Current <input type="checkbox"/> Past Due (Attach Explanation)	

PROJECT INFORMATION	
Total Budgeted Project Cost per Agreement (not including Community's funds for Administration)	«Total_Project_Budget»
Total CDBG-ED Funds Spent to Date (not including Community's funds for Administration)	
Total Match Funds Spent to Date	
Total Project Funds Spent to Date	

FULL-TIME POSITIONS INFORMATION	<i>Date Positions must be created by, per Agreement: «Position_Creation_Date»</i>	<i>Date positions must be maintained, per Agreement: «Position_Maintenance_Date»</i>
Total Number of Full Time Positions to be Retained per Agreement		«Exist_PositionNUM»
Total Number of Full Time Positions to be Created per Agreement		«New_positionsNUM»
Total Number of Full Time Positions to be Retained and Created per Agreement		!Undefined Bookmark, EXIST_POS
Cumulative Number of Full Time Positions Retained and Created as of the End of this Semi-Annual Period		

FINANCIAL INFORMATION
FISCAL YEAR END DATE _____ Please indicate which financial statements are being submitted with this report as required in the Agreement. . Interim Dated _____ . Fiscal Year End Dated _____

EMPLOYEE INFORMATION
. A Copy of Page 1 of the most recent UC 101 Report is attached.
For Semi-Annual Reporting periods ending December 31: Please submit the Business's Federal Equal Opportunity Report (EEO-1) . Exempt from filing EEO-1 . Most recent EEO-1 is attached . N/A because this report is for the Semi-Annual Reporting period ending June 30
Position Openings have been posted with the Department of Workforce Development, Job Service and/or Workforce Development Board <input type="checkbox"/> Yes <input type="checkbox"/> No (if no, attach explanation)

SIGNATURE:
I certify the information in this report is correct. Signature of Business Representative/Date
Commerce Review Initials